

REMARKS

I. Status of the Claims

Claims 1-36 are now pending in this application. Claims 6 and 7 are amended to correct typographical errors. Support for these amendments may be found, for example, on pages 3-4 of the specification. Accordingly, no new matter is added herein.

II. Allowable Subject Matter

Applicants thank the Examiner for his indication in the Office Action that claims 7 and 8 would be allowable if rewritten in independent form. However, Applicants choose not to amend the claims in this manner at the present time. Applicants believe that, in view of the arguments made herein, all pending claims 1-36 should now be ready for immediate allowance.

III. Rejections Under 35 U.S.C. § 102(e)

The Examiner rejects claims 1, 6, 9, and 13-15 under 35 U.S.C. § 102(e) as allegedly anticipated by U.S. Patent Application Publication No. 2002/0059682 to Hoeffkes et al. ("Hoeffkes"). The Examiner asserts that Hoeffkes "teaches a dyeing composition comprising a primary alcohol ethanol as an aldehyde precursor...at least one enzyme such as alcohol oxidase...and at least one heteroaromatic hydrazone." See Office Action at page 3. Applicants respectfully disagree and traverse this rejection.

Under 35 U.S.C. § 102(b), a reference must teach, either expressly or inherently, each and every limitation of the pending claims in order to anticipate. See MPEP

§ 2131. Further, a rejection under § 102 is proper only when the claimed subject matter is identically described or disclosed in the prior art. *In re Arkley*, 455 F.2d 586, 587 (CCPA 1972) (emphasis added). These criteria have not and cannot be met here with respect to the present claims.

More specifically, Hoeffkes describes a composition for dyeing keratin fibers comprising a dye precursor and a phenol-oxidizing enzyme which can be obtained from the *Stachybotrys* species (see page 1, paragraph [0010]). Hoeffkes does not teach or suggest aldehydes as dyeing agents, much less aldehyde precursors as dye precursors. The Examiner, pointing to paragraph [0211] of Hoeffkes, alleges that ethanol serves as an aldehyde precursor. However, Applicants note that ethanol is described as an optional additive or auxiliary component, which is listed among myriad different auxiliary components. See page 7, paragraph [0131] – page 11, paragraph [0234]. Furthermore, ethanol is described as a solvent or solubility promoter (see page 11, paragraph [0211]), not as a dye precursor.

Moreover, the phenol-oxidizing enzymes described by Hoeffkes cannot function to convert ethanol into an aldehyde, because ethanol is not a phenolic compound. The instant claims recite that the at least one enzyme must be “able to generate an aldehyde from the at least one aldehyde precursor.” See, for example, Claim 1. Thus, Hoeffkes does not and cannot teach each and every element of the claimed invention and Applicants respectfully request that the Examiner withdraw this rejection and allow the claims.

IV. Rejections Under 35 U.S.C. § 103(a)

The Examiner has also rejected, under 35 U.S.C. § 103(a), claims 2-5, 10, and 26 over Hoeffkes and claims 11-12 over Hoeffkes in view of U.S. Patent No. 3,634,013 to Benshein et al. (“Benshein”). Applicants respectfully traverse these rejections.

To prove a *prima facie* case of obviousness, the Office must show that the cited references would have provided to one of ordinary skill in the art some suggestion or motivation to combine or modify their teachings in an effort to achieve all of the limitations of the claimed invention, with a reasonable expectation of success (see MPEP § 2143). These criteria have not and cannot be met here with respect to the present claims.

Rejection of Claims 2-5, 10, and 26 under 35 U.S.C. § 103(a) in view of Hoeffkes

As discussed above, Hoeffkes fails to teach or suggest a dye composition comprising at least one aldehyde precursor, at least one enzyme able to generate an aldehyde from the at least one aldehyde precursor, and at least one heteroaromatic hydrazone. While Hoeffkes mentions that ethanol may optionally be added to the composition, Hoeffkes does not employ ethanol as an aldehyde precursor. Indeed, Hoeffkes does not even remotely suggest aldehydes as dyeing agents, or aldehyde precursors as dye precursors. Thus, Hoeffkes alone cannot serve as a proper basis for a *prima facie* case of obviousness and Applicants respectfully request that the Examiner withdraw this rejection and allow the claims.

Rejection of Claims 11 and 12 under 35 U.S.C. § 103(a) in view of Hoeffkes and Benshein

The Examiner concedes that Hoeffkes does not teach hydrazones of the formulas claimed in claims 11 and 12, and relies on Benshein to disclose this element of the claims. Benshein discloses hair dye compositions comprising a coupling agent and a heterocyclic compound containing a hydroazono group (see col. 1, lines 24-28). Bernstein does not teach or suggest a composition comprising aldehyde precursors or enzymes able to generate aldehydes from aldehyde precursors. As discussed above, Hoeffkes fails to teach or suggest a dye composition comprising at least one aldehyde precursor, at least one enzyme able to generate an aldehyde from the at least one aldehyde precursor, and at least one heteroaromatic hydrazone. Thus, Benshein fails to remedy the deficiencies of Hoeffkes with respect to aldehyde precursors and enzymes able to generate aldehydes from aldehyde precursors. Accordingly, the cited references, either alone or in combination, do not teach each and every element of the pending claims as amended, and Applicants respectfully request that the Examiner withdraw the rejection and allow the claims.

V. Conclusion

In view of the foregoing amendments and remarks, Applicants respectfully request the timely allowance of the pending claims. Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.

Dated: December 19, 2005

By: 
Thalia V. Warnement
Reg. No. 39,064